

Senate Bill No. 1263

CHAPTER 843

An act to amend Section 116540 of, and to add Section 116527 to, the Health and Safety Code, and to add Section 106.4 to the Water Code, relating to drinking water.

[Approved by Governor September 29, 2016. Filed with
Secretary of State September 29, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1263, Wieckowski. Public water system: permits.

(1) Existing law, the California Safe Drinking Water Act, imposes on the State Water Resources Control Board various responsibilities and duties relating to providing a dependable, safe supply of drinking water. The act prohibits a person from operating a public water system unless he or she first submits an application, including a technical report, to the state board and receives a permit, as specified. The act requires the state board, upon determination that the application is complete, to make a specified investigation, and allows the state board to impose permit conditions, requirements for system improvements, and time schedules as the state board deems necessary to ensure an affordable, reliable, and adequate supply of water at all times that is pure, wholesome, and potable. The act provides that a person who knowingly makes a false statement or representation in a report submitted, maintained, or used for purposes of compliance with the act may be punished as a misdemeanor.

This bill would require a person submitting an application for a permit for a proposed new public water system to first submit a preliminary technical report to the state board at least 6 months before initiating construction of any water-related improvement, as defined. Because a misstatement in the report could be a crime under the provision described above, this bill would impose a state-mandated local program by expanding the scope of a crime. The bill would allow the state board to direct the applicant to undertake additional discussion and negotiation with certain existing public water systems the state board determines have the technical, managerial, and financial capacity to provide an adequate and reliable supply of domestic water to the service area of the proposed new public water system, as specified, and would require an applicant to comply before submitting an application for a permit to operate a system and would prohibit the application from being deemed complete unless the applicant has complied. The bill would, if the state board determines that it is feasible for the service area of the public water system addressed by the application to be served by one or more currently permitted public water systems, authorize the state board to deny the permit of a proposed new public water system

if it determines that it is reasonably foreseeable that the proposed new public water system will be unable to provide affordable, safe drinking water in the reasonably foreseeable future, as prescribed.

(2) Existing law allows the state board to delegate primary responsibility for the administration and enforcement of the act within a county to a local health officer if certain criteria are met. Existing law requires that the local primacy agency be empowered with all of the authority granted to the state board over the specified public water systems.

This bill would prohibit a local primacy agency from issuing a permit to operate a public water system without the concurrence of the state board. The bill would require, for a proposed new public water system that would be regulated by a local primacy agency, the applicant to also submit a copy of the preliminary technical report to the state board.

(3) Existing law declares the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Existing law requires a city or county that determines a project, as defined, is subject to the California Environmental Quality Act to identify certain water systems that may supply water for the project and to request those public water systems to prepare and approve a specified water supply assessment. Under existing law, if no public water system is identified, the city or county is required to prepare and approve the water supply assessment. Existing law provides that if, as a result of its assessment, the public water system or city or county concludes that its water supplies are, or will be, insufficient, the public water system or city or county is required to provide its plans for acquiring additional water supplies, as prescribed.

This bill would prohibit a city, including a charter city, or a county from issuing a building permit for the construction of a new residential development where a source of the water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility, as specified. By imposing new duties on a city or county in connection with the issuance of a building permit, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) There are over 7,500 public water systems in California. The vast majority of these systems provide a reliable supply of safe drinking water. However, there are hundreds of smaller public water systems that consistently fail to provide a reliable supply of safe drinking water to their

customers. Many failing public water systems were created without the necessary technical, managerial, or financial capacity to be sustainable in the long term in view of water supply uncertainties. These uncertainties can be created by effects on water quality and quantity, global climate change, migration of groundwater contamination, the establishment of new drinking water standards, and other factors that are known to significantly erode a system's capacity.

(b) Failing public water systems disproportionately affect disadvantaged communities who are least able to afford to address the conditions that led to the failure.

(c) The proliferation of new, unsustainable public water systems also may undermine the state's human right to water policy.

(d) Therefore, it is the policy of the state to discourage the establishment of new, unsustainable public water systems when there is a feasible alternative.

SEC. 2. Section 116527 is added to the Health and Safety Code, to read:

116527. (a) As used in this section, "water-related improvement" includes, but is not limited to, a water pipe, a water pump, or drinking water infrastructure.

(b) (1) Before a person submits an application for a permit for a proposed new public water system, the person shall first submit a preliminary technical report to the state board at least six months before initiating construction of any water-related improvement.

(2) In order to assist in expediting the permitting process, a person that is considering submitting an application for a permit for a proposed new public water system is encouraged, but is not required, to submit the preliminary technical report no later than seven days after submission of an application to the city or county for a building permit for any water-related improvement.

(3) For a proposed new public water system that would be regulated by a local primacy agency, the applicant shall also submit a copy of the preliminary technical report to the state board.

(c) The preliminary technical report shall include all of the following:

(1) The name of each public water system for which any service area boundary is within three miles, as measured through existing public rights-of-way, of any boundary of the applicant's proposed public water system's service area.

(2) A discussion of the feasibility of each of the adjacent public water systems identified pursuant to paragraph (1) annexing, connecting, or otherwise supplying domestic water to the applicant's proposed new public water system's service area. The applicant shall consult with each adjacent public water system in preparing the report and shall include in the report any information provided by each adjacent public water system regarding the feasibility of annexing, connecting, or otherwise supplying domestic water to that service area.

(3) A discussion of all actions taken by the applicant to secure a supply of domestic water from an existing public water system for the proposed new public water system's service area.

(4) All sources of domestic water supply for the proposed new public water system.

(5) The estimated cost to construct, operate, and maintain the proposed new public water system, including long-term operation and maintenance costs and a potential rate structure.

(6) A comparison of the costs associated with the construction, operation and maintenance, and long-term sustainability of the proposed new public water system to the costs associated with providing water to the proposed new public water system's service area through annexation by, consolidation with, or connection to an existing public water system.

(7) A discussion of all actions taken by the applicant to pursue a contract for managerial or operational oversight from an existing public water system.

(8) An analysis of whether a proposed new public water system's total projected water supplies available during normal, single dry, or multiple dry water years during a 20-year projection will meet the projected water demand for the service area.

(9) Any information provided by the local agency formation commission. The applicant shall consult with the local agency formation commission if any adjacent public water system identified pursuant to paragraph (1) is a local agency as defined by Section 56054 of the Government Code.

(d) (1) If documents prepared to comply with Division 13 (commencing with Section 21000) of the Public Resources Code or any other application for public agency approval concerning providing drinking water to the proposed new public water system's service area include the information required by subdivision (c), including documentation of the consultation with each adjacent public water system and the local agency formation commission, the applicant may submit those documents to the state board in lieu of the preliminary technical report and the documents shall be considered the functional equivalent of the preliminary technical report.

(2) If documents prepared to comply with Division 13 (commencing with Section 21000) of the Public Resources Code or any other application for public agency approval concerning providing drinking water to the proposed new public water system's service area include some, but not all, of the information required by subdivision (c), including documentation of the consultation with an adjacent public water system and the local agency formation commission, the applicant shall submit those documents and the preliminary technical report to the state board and together those documents and the preliminary technical report shall be considered the functional equivalent of the preliminary technical report requirements of this section. A preliminary technical report submitted pursuant to this paragraph shall only be required to include information that is not otherwise addressed by the other submitted documents.

(e) Upon review of a preliminary technical report submitted pursuant to this section, the state board may do all of the following actions:

(1) If an existing public water system has not already sought annexation of the service area of a proposed new public water system from the local agency formation commission or the applicant has not already sought an extension of services agreement from an existing public water system, direct the applicant to undertake additional discussion and negotiation with the local agency formation commission and any existing public water system meeting the requirements of paragraph (1) of subdivision (c) that the state board determines has the technical, managerial, and financial capacity to provide an adequate and reliable supply of domestic water to the service area of the proposed new public water system. The state board shall not direct the applicant to undertake additional discussion and negotiation if documentation submitted to the state board demonstrates that additional discussion and negotiation is unlikely to be successful, including, but not limited to, documentation that the local agency formation commission has previously denied the application for an extension of service or annexation, or that the existing public water system has declined to apply to the local agency formation commission for approval of an extension of services to, or annexation of, the service area of the proposed new public water system.

(2) Direct the applicant to report on the results of discussion and negotiations conducted pursuant to paragraph (1) to the state board.

(3) Establish a time schedule for the applicant's performance of directives issued pursuant to this subdivision.

(f) (1) An applicant shall comply with the state board's directives as assigned in and consistent with subdivision (e) before submitting an application for a permit for a proposed new public water system under this chapter.

(2) An application for a permit for a proposed new public water system under this chapter shall not be deemed complete unless the applicant has complied with the requirements of this section.

(g) The state board's review of a preliminary technical report pursuant to this section shall not be deemed a project or approval of a permit application submitted under this chapter.

(h) The requirements of this section do not apply to either of the following:

(1) An application for a permit for a new public water system that was deemed complete prior to January 1, 2017, pursuant to the statutory permit application requirements effective at the date of the permit submission.

(2) An extension of, or annexation to, an existing public water system.

(i) (1) The requirements of this section do not apply to a service area where an applicant certifies in writing to the state board that the applicant will not rely on the establishment of a new public water system for its water supply. The state board shall acknowledge receipt of the applicant's certification in a timely manner.

(2) An applicant who certifies that the service area will not rely on the establishment of a new public water system and later seeks a permit for a new public water system shall comply with the provisions of this section

and shall assume all risk of delay or rejection related to the permit application.

(j) (1) The provisions of this subdivision apply to a proposed new public water system that achieves either or both of the following:

(A) Consolidates two or more existing public water systems, existing state small water systems, or other existing water systems, which results in the creation of a new public water system.

(B) Provides water service in lieu of individual domestic wells.

(2) At least six months before the construction of any water-related improvements, an applicant for a new public water system that meets the criteria in paragraph (1) shall provide a written notice to the state board that does both of the following:

(A) Clearly describes the proposed new public water system and how it meets the criteria in paragraph (1).

(B) Requests an exemption from the requirements of this section.

(3) The state board shall promptly acknowledge receipt of a written notice described in paragraph (2). The state board shall have 30 days from the acknowledgment of receipt of the written notice to issue a written notice to the applicant that compliance with the requirements of this section is necessary and that an application for a permit of a new public water system under this chapter is not complete until the applicant has complied with the requirements of this section. A determination by the state board that compliance with the requirements of this section is necessary shall be final and is not subject to review by the state board. A determination by the state board pursuant to this subdivision is not considered a project subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

(4) If the state board receives a written notice from a project applicant that satisfies the requirements of paragraph (2), the project described in the notice is deemed exempt from the requirements of this section on the 35th day following the date of the state board's acknowledgment of receipt of the written notice, unless the state board has issued a notice to comply pursuant to paragraph (3).

SEC. 3. Section 116540 of the Health and Safety Code is amended to read:

116540. (a) Following completion of the investigation and satisfaction of the requirements of paragraphs (1) and (2), the state board shall issue or deny the permit. The state board may impose permit conditions, requirements for system improvements, technical, financial, or managerial requirements, and time schedules as it deems necessary to ensure a reliable and adequate supply of water at all times that is pure, wholesome, potable, and does not endanger the health of consumers.

(1) A public water system that was not in existence on January 1, 1998, shall not be granted a permit unless the public water system demonstrates to the state board that the water supplier possesses adequate financial, managerial, and technical capability to ensure the delivery of pure,

wholesome, and potable drinking water. This section shall also apply to any change of ownership of a public water system.

(2) A permit under this chapter shall not be issued to an association organized under Title 3 (commencing with Section 18000) of the Corporations Code. This section shall not apply to unincorporated associations that, as of December 31, 1990, are holders of a permit issued under this chapter.

(b) Notwithstanding Section 116330, a local primacy agency shall not issue a permit under this article without the concurrence of the state board.

(c) In considering whether to approve a proposed new public water system, the state board shall consider the sustainability of the proposed new public water system and its water supply in the reasonably foreseeable future, in view of global climate change, potential migration of groundwater contamination and other potential treatment needs, and other factors that can significantly erode a system's capacity.

(d) If the state board determines that it is feasible for the service area of the public water system addressed by an application under this article to be served by one or more permitted public water systems identified pursuant to paragraph (1) of subdivision (c) of Section 116527, the state board may deny the permit of a proposed new public water system if it determines, based on its assessment of the preliminary technical report submitted pursuant to Section 116527, the permit application, and other relevant, substantial evidence submitted, that it is reasonably foreseeable that the proposed new public water system will be unable to provide affordable, safe drinking water in the reasonably foreseeable future.

(e) An applicant may appeal decisions and actions of the deputy director taken pursuant to this section to the state board.

SEC. 4. Section 106.4 is added to the Water Code, to read:

106.4. (a) For the purposes of this section:

(1) "Bottled water" has the same meaning as defined in Section 111070 of the Health and Safety Code.

(2) "Residential development" has the same meaning as defined in Section 65008 of the Government Code.

(3) "Retail water facility" has the same meaning as defined in Section 111070 of the Health and Safety Code.

(4) "Water-vending machine" has the same meaning as defined in Section 111070 of the Health and Safety Code.

(5) "Water hauler" has the same meaning as defined in Section 111070 of the Health and Safety Code.

(b) A city, including a charter city, or a county shall not issue a building permit for the construction of a new residential development where a source of water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility.

(c) This section does not apply to a residence that will be rebuilt because of a natural disaster.

(d) The Legislature finds and declares that this section addresses a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.